

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 62004-5-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
CHRISTOPHER J. LOREEN,)	UNPUBLISHED
)	
Appellant.)	FILED: <u>June 15, 2009</u>
)	
)	

Cox, J. — Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find guilt beyond a reasonable doubt.¹ Because the State’s evidence here satisfies this standard, we hold that it is sufficient to support Christopher Loreen’s conviction for attempted residential burglary. We affirm.

Gregory Sloan owns a home off Lake Cavanaugh Road in a rural, heavily wooded area of Skagit County near Mount Vernon. In November 2006, work took him out of state for several months. Before leaving, Sloan boarded up all the windows and doors and secured his home. He also asked relatives to check on the property regularly.

Upon Sloan’s return in February 2007, he discovered that nearly all his possessions had been stolen and his house had been virtually destroyed,

¹ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

leaving him homeless. Nearly all the possessions he had collected over the past 25 years had been taken: his truck, boats, all his clothes, pictures, furniture, appliances, the front door, and the kitchen sink. Upon inspecting further, Sloan discovered that a thousand-gallon milk tank on his property was being cut up into pieces with a cutting torch and stolen piece by piece.

Sloan reported the burglary to the Sheriff's office. Fearful of living on the property, Sloan stayed with a friend. Each day that Sloan checked on his place he found the doors to his home open and discovered additional items that had been stolen overnight. It appeared to Sloan that each night someone scavenged through his home and also cut away part of his milk tank. Sloan's frustration with inaction on the part of the Sheriff's office led him to stake out his property on the night of March 6.

About an hour after dark, Sloan heard a pickup truck at the bottom of his driveway. He quietly made his way down the driveway to get a better look, flashlight in hand. He observed two people, partway up the drive, on their knees looking up the driveway in the dark, apparently to see if anyone was home.

Sloan shined his flashlight on them and started yelling. He chased the two individuals down the driveway on foot. One man got away in the truck. Sloan caught the other man, later identified as Loreen, and struggled with him. Once subdued, Loreen offered excuses why he was on Sloan's property. When Sloan told Loreen he had called the Sheriff, Loreen broke away from Sloan and, in an effort to get away, jumped into a swamp on the property. Sloan then called

authorities, who apprehended Loreen shortly thereafter.

During a detective's investigation, Loreen told him that he and a friend, Darrin Ebert, had gone to Sloan's property on March 4, stayed several hours, and took some property from the house. Loreen told the detective that Ebert went alone to Sloan's property on March 5, and that they both went back on March 6.

The State charged Loreen with residential burglary based on his activities on March 4. The State also charged him with attempted residential burglary based on his activities on March 6. At trial, the jury heard testimony from Sloan, the investigating detectives, and others. Loreen also testified. The jury convicted Loreen of the lesser included offense of first degree criminal trespass on one count and convicted him of attempted residential burglary on the remaining count.

Loreen appeals.

SUFFICIENCY OF EVIDENCE

Loreen challenges the sufficiency of the State's evidence arguing the State failed to prove that he took a substantial step toward committing attempted residential burglary. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find guilt beyond a reasonable doubt.² "A claim of insufficiency admits the truth of the State's

² Id. at 201.

evidence and all inferences that reasonably can be drawn therefrom.”³ In determining sufficiency, circumstantial evidence and direct evidence are equally reliable.⁴

Here, Loreen challenges only the sufficiency of the State’s evidence regarding his conviction for attempted residential burglary on March 6.

At Loreen’s trial, consistent with the statutory definition of residential burglary, the judge instructed the jury in its “to convict” instruction as follows:

To convict the defendant of the crime of attempted Residential Burglary as charged in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of March, 2007, the defendant did an act which was a substantial step toward the commission of Residential Burglary;
- (2) That the act was done with the intent to commit Residential Burglary; and
- (3) That the acts occurred in the State of Washington. . . .^[5]

The court also gave the jury instructions on residential burglary and defining intent and “substantial step.” The court also instructed the jury on accomplice liability with the following instruction:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

. . . .

³ Id.

⁴ State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

⁵ Clerk’s Papers at 133.

(2) aids or agrees to aid another person in planning or committing the crime.

The word “aid” means all assistance whether given by words, acts, encouragement, support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice. . . .^[6]

Loreen’s primary argument is that the State’s evidence established, at most, that he intended to enter Sloan’s property and take items from the property or shed, but not from the residence. He contends the evidence supports a conviction for first degree trespass, not for attempted residential burglary.

At trial, Sloan testified that, after subduing Loreen, he asked, “If I can get all your stuff back, will you be lenient on me?” A police official testified that Loreen also admitted to Sloan that he was sorry for stealing the items from his property. A detective testified that during his investigation, Loreen told him that he and Ebert went to Sloan’s property on March 4, stayed several hours, and took property from the house.

In his own testimony, Loreen admitted going to Sloan’s house on March 4, but denied taking anything. He admitted going with Ebert again on March 6, but denied taking or intending to take anything from the house. Loreen also denied telling Detective Steiner that he had gone with Ebert to take property from Sloan’s house. He later denied going into Sloan’s house at all on March 4, stating that he only walked around outside while he was there with Ebert.

⁶ Clerk’s Papers at 135.

Viewing the evidence in the light most favorable to the State, the jury could reasonably find that Loreen and Ebert had taken things from Sloan's house before March 6. Sloan testified that the thefts from his home and property were ongoing. When Sloan confronted the men, they ran, and Loreen initially lied about what he was doing in the area once he was caught. Loreen's statement to Sloan that he could get his possessions back also supports an inference that Loreen was involved with prior burglaries to Sloan's home. Based on this evidence, a jury could reasonably infer that Loreen and Ebert's trip to the property on March 6 was for the purpose of again stealing from Sloan's residence. Thus, the jury could have concluded that Loreen's nighttime return to the property on March 6 was a substantial step in the commission of the crime of residential burglary either as a principal or as an accomplice.

Loreen also argues that because the jury found him guilty of first degree criminal trespass instead of residential burglary in count I, the State's evidence does not show he took or intended to take items from Sloan's house on March 6. This is unpersuasive.

We evaluate separately whether each crime charged is supported by sufficient evidence. The question before this court is whether the State produced sufficient evidence to support the jury's decision of guilt based on the March 6 incident. The court's instructions to the jury required the jury to decide each count separately and to not allow the verdict on one count to control the verdict on the other count. We presume the jury followed the court's instruction.⁷

We affirm the judgment and sentence.

Cox, J.

WE CONCUR:

Becker, J.

Edenfor, J.

⁷ State v. Johnson, 124 Wn.2d 57, 77, 873 P.2d 514 (1994).